

1 HB2  
2 44231-4  
3 By Representative Lindsey  
4 RFD: Ways and Means Education Fund  
5 First Read: 04-DEC-2001

1  
2     Enrolled, An Act,

3             To amend Sections 40-18-1, 40-18-24, 40-18-35,  
4     40-18-35.1, 40-18-42, 40-18-80, 40-18-82, 40-18-83, and add  
5     new Sections 40-2A-17, 40-2A-18 and 40-18-80.1, Code of  
6     Alabama 1975, to disallow deductions for certain payments for  
7     intangible property (patents and copyright) and interest  
8     expense to related entities; to restore the federal income tax  
9     deduction to a calculation based on the ratio of Alabama  
10    income to total income; to provide that allocation of interest  
11    from nonbusiness income is based on cost of assets instead of  
12    value; to suspend for one year the net operating loss  
13    deduction for corporate taxpayers; to allow the Commissioner  
14    of the Department of Revenue to apportion or allocate gross  
15    income, deductions, credits, or allowances between two or more  
16    businesses owned or controlled by the same interest if such  
17    allocation is necessary to prevent evasion of Alabama income  
18    taxes or to clearly reflect income; to provide that tax  
19    related services provided on a contingent fee basis is  
20    evidence of the evasion of taxes and provide for penalties; to  
21    revise rules for payment of estimated income taxes to conform  
22    more closely to federal estimated tax payment rules; to waive  
23    certain interest and penalties for underpayments of estimated  
24    tax resulting from suspension of net operating loss deductions  
25    and the add back of certain interest and intangible expenses;

1 to clarify and confirm current law as it relates to interest  
2 accrual after final assessment; and to authorize certain  
3 pass-through entities not to pay certain income taxes on  
4 behalf of nonresident owners who have already paid those  
5 taxes.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 40-18-1, 40-18-24, 40-18-35 and  
8 40-18-35.1, Code of Alabama 1975, are amended to read as  
9 follows:

10 "§40-18-1.

11 "For the purpose of this chapter, the following  
12 terms shall have the respective meanings ascribed by this  
13 section:

14 (1) CASH. Any legal tender, negotiable paper, or  
15 solvent credit.

16 (2) CORPORATION. The term includes associations ~~and~~,  
17 joint stock companies and any other entity classified as an  
18 association taxable as a corporation for federal income tax  
19 purposes.

20 (3) DISREGARDED ENTITY. A limited liability entity  
21 that is disregarded for purposes of federal income tax or a  
22 qualified subchapter S subsidiary, as defined in 26 U.S.C. §  
23 1361.

1           ~~(3)~~ (4) DOMESTIC. When applied to a corporation or  
 2           subchapter K entity means created or organized under the laws  
 3           of the State of Alabama.

4           ~~(4)~~ (5) FIDUCIARY. A guardian, trustee, executor,  
 5           administrator, receiver, conservator, or any person acting in  
 6           any fiduciary capacity for any person.

7           ~~(5)~~ (6) FISCAL YEAR. An accounting period of twelve  
 8           months ending on the last day of any month other than  
 9           December.

10          ~~(6)~~ (7) FOREIGN. When applied to a corporation or a  
 11          subchapter K entity means created or organized under a  
 12          jurisdiction other than ~~outside of~~ the State of Alabama.

13          ~~(7)~~ (8) HEAD OF FAMILY. As used in this chapter, the  
 14          term "head of family" has the same meaning as the term "head  
 15          of household" as defined in 26 U.S.C. §2(b).

16          (9) INTANGIBLE EXPENSES AND COSTS. Any expenses,  
 17          losses and costs for, related to, or in connection directly or  
 18          indirectly with the acquisition, use, maintenance, management,  
 19          ownership, sale, exchange, or disposition of intangible  
 20          property to the extent such amounts are allowed as deductions  
 21          in determining taxable income before operating loss deduction  
 22          and special deductions for the taxable year including, without  
 23          limitation, expenses or losses related to or incurred in  
 24          connection directly or indirectly with factoring transactions  
 25          or discounting transactions, royalties, patents, technical and

1 copyright licensing fees, and other similar expenses and  
2 costs. Intangible expenses and costs paid for the use of  
3 intangible property in this state are, to the recipient,  
4 income derived from sources within Alabama.

5 (10) INTANGIBLE PROPERTY. Patents, patent  
6 applications, trade names, trademarks, service marks,  
7 franchises, know-how, formulas, designs, patterns, processes,  
8 formats, copyrights and similar types of intangible assets,  
9 choses in action, and accounts receivable.

10 (11) INTEREST EXPENSES AND COSTS. Amounts directly  
11 or indirectly allowed as deductions under 26 U.S.C. §163 for  
12 purposes of determining taxable income under the Internal  
13 Revenue Code. Interest expenses and costs paid to a related  
14 member by a subchapter K entity or a corporation, to the  
15 extent apportioned to Alabama by the payor, are to the  
16 recipient related member income derived from sources within  
17 Alabama.

18 ~~(8)~~ (12) PAID. For the purpose of deductions and  
19 credits hereinafter provided for with respect to income tax  
20 means paid or accrued or paid or incurred, and the terms "paid  
21 or accrued" and "paid or incurred" shall be construed  
22 according to the method of accounting on the basis of which  
23 the net income is computed under this chapter.

1           ~~(9)~~(13) PERSON. Any individual, trust, estate,  
2     ~~private~~ corporation, association, disregarded entity, or  
3     ~~partnership~~ subchapter K entity.

4           (14) RELATED ENTITY. A stockholder who is an  
5     individual, or a member of the stockholder's family enumerated  
6     in Section 318 of the Internal Revenue Code, if the  
7     stockholder and the members of the stockholder's family own,  
8     directly, indirectly, beneficially or constructively, in the  
9     aggregate, at least fifty percent of the value of the  
10    taxpayer's outstanding stock; a stockholder, or a  
11    stockholder's partnership, limited liability company, estate,  
12    trust or corporation, if the stockholder and the stockholder's  
13    partnerships, limited liability companies, estates, trusts and  
14    corporations own directly, indirectly, beneficially or  
15    constructively, in the aggregate, at least fifty percent of  
16    the value of the taxpayer's outstanding stock; or a  
17    corporation, or a party related to the corporation in a manner  
18    that would require an attribution of stock from the  
19    corporation to the party or from the party to the corporation  
20    under the attribution rules of 26 U.S.C. §318, if the taxpayer  
21    owns, directly, indirectly, beneficially or constructively, at  
22    least fifty percent of the value of the corporation's  
23    outstanding stock. The attribution rules on 26 U.S.C. §318  
24    shall apply for purposes of determining whether the ownership  
25    requirements of this subdivision have been met.

1           (15) RELATED MEMBER. A person that, with respect  
2 to the taxpayer any time during the taxable year, is a related  
3 entity, as defined in this subsection, a component member as  
4 defined in 26 U.S.C. §1563(b) of a controlled group of which  
5 the taxpayer is also a component, or is a person to or from  
6 whom there is attribution of stock ownership in accordance  
7 with 26 U.S.C. §1563(e).

8           ~~(10)~~(16) REPORT FROM SOURCE. All individuals,  
9 corporations, associations, and partnerships, in whatever  
10 capacity acting, including lessees or mortgagors of real or  
11 personal property, fiduciaries, employers, and all other  
12 officers and employees of the state or of any municipal  
13 corporation or political subdivision of the state having  
14 control, receipt, custody, or payment of interest, rent,  
15 salaries, wages, premiums, annuities, compensation,  
16 remunerations, emoluments, barter income, or other fixed or  
17 determinable annual or periodical gains, profits and income  
18 taxable under this chapter.

19           ~~(11)~~(17) SUBCHAPTER K ENTITY. A partnership,  
20 including a limited partnership or limited liability  
21 partnership, limited liability company, or any other entity  
22 subject to subchapter K of the Internal Revenue Code, 26  
23 U.S.C. §§701 to 761, for federal income tax purposes, not  
24 including a single member limited liability company.

1           ~~(12)~~(18) TAXABLE YEAR. The calendar year or the  
2       fiscal year ending during the calendar year upon the basis of  
3       which net income is computed, or a period of less than twelve  
4       months resulting from a change in accounting period as  
5       provided in Section 40-18-30.

6           ~~(13)~~(19) TAXPAYER. Any person subject to a tax  
7       imposed by this chapter, or whose income is, in whole or in  
8       part, subject to a tax imposed by this chapter."

9           "§40-18-24.

10          "(a) The amount of income, deduction, gain, loss, or  
11       credit includable or deductible by an owner of an interest in  
12       a subchapter K entity shall be determined in accordance with  
13       subchapter K of the Internal Revenue Code, 26 U.S.C. §§  
14       701-761.

15          (b) For purposes of computing its net income, a  
16       subchapter K entity shall add back otherwise deductible  
17       interest expenses and costs and intangible expenses and costs  
18       directly or indirectly paid, accrued or incurred to, or in  
19       connection directly or indirectly with, one or more direct or  
20       indirect transactions, with one or more related members,  
21       except to the extent the subchapter K entity shows, upon  
22       request by the Commissioner, that the corresponding item of  
23       income was in the same taxable year:



1           (1) subject to a tax based on or measured by the  
2           related member's net income in Alabama or any other state of  
3           the United States, or

4           (2) subject to a tax based on or measured by the  
5           related member's net income by a foreign nation which has in  
6           force an income tax treaty with the United States, if the  
7           recipient was a "resident" (as defined in the income tax  
8           treaty) of the foreign nation.

9           (c) For purposes of this subsection (b), "subject to  
10          a tax based on or measured by the related member's net income"  
11          means that the receipt of the payment by the recipient related  
12          member is reported and included in income for purposes of a  
13          tax on net income, and not offset or eliminated in a combined  
14          or consolidated return which includes the payor.

15          (d) The subchapter K entity shall make the  
16          adjustments required in subsection (b) of this section unless  
17          the subchapter K entity establishes that the adjustments are  
18          unreasonable, or the subchapter K entity and the Commissioner  
19          of Revenue agree in writing to the application or use of  
20          alternative adjustments and computations. Nothing in this  
21          section shall be construed to limit or negate the  
22          Commissioner's authority to otherwise enter into agreements  
23          and compromises otherwise allowed by law.

24          (e) The adjustments required in subsection (b) shall  
25          not apply to that portion of interest expenses and costs and

1 intangible expenses and costs if the subchapter K entity can  
2 establish that the transaction giving rise to the interest  
3 expenses and costs or the intangible expenses and costs  
4 between the subchapter K entity and the related member did not  
5 have as a principal purpose the avoidance of any Alabama tax  
6 and the related member is not primarily engaged in the  
7 acquisition, use, licensing, maintenance, management,  
8 ownership, sale, exchange, or any other disposition of  
9 intangible property, or in the financing of related entities.  
10 If the transaction giving rise to the interest expenses and  
11 costs or intangible expenses and costs, as the case may be,  
12 has a substantial business purpose and economic substance and  
13 contains terms and conditions comparable to a similar arm's  
14 length transaction between unrelated parties, the transaction  
15 will be presumed to not have as its principal purpose tax  
16 avoidance, subject to rebuttal by the Commissioner of the  
17 Department of Revenue.

18 (f) Nothing in this section shall require a  
19 subchapter K entity to add to its net income more than once  
20 any amount of interest expenses and costs or intangible  
21 expenses and costs that the subchapter K entity pays, accrues  
22 or incurs to a related member described in subsection (b).

23 (g) Nothing in this section shall be construed to  
24 limit or negate the Commissioner's authority to make  
25 adjustments under this chapter.

1           (h) Subsection (b) shall not limit the deduction of  
 2           the interest portion of rent paid under lease agreements  
 3           described in § 40-18-35(a)(9).

4           (i) Except with regard to payments described in §§  
 5           40-18-35(a)(4)b. and 40-18-35(a)(9) nothing in this section  
 6           shall be construed to allow any item to be deducted more than  
 7           once or to allow a deduction for any item that is excluded  
 8           from income or to allow any item to be included in the Alabama  
 9           taxable income of more than one taxpayer."

10           "§40-18-35.

11           "(a) The following items shall be deducted from  
 12           federal taxable income for purposes of computing taxable  
 13           income under this chapter:

14                     (1) Refunds of state and local income taxes.

15                     (2) Federal income tax paid or accrued during the  
 16           taxpayer's taxable year. The portion of federal income tax  
 17           deductible by a corporation earning income from sources both  
 18           inside and outside of Alabama shall be determined by the ratio  
 19           that the corporation's taxable income, computed without the  
 20           deduction for federal income tax, apportioned and allocated to  
 21           Alabama bears to the corporation's taxable income, computed  
 22           without the deduction for federal income tax, apportioned and  
 23           allocated everywhere.

24                     (3) Interest income earned on obligations of the  
 25           United States.

(4)a. Interest income earned on obligations of the State of Alabama or its subdivisions or instrumentalities thereof to the extent included in gross income for the purposes of federal income taxation.

b. Interest income earned on obligations of the State of Alabama or its subdivisions or instrumentalities thereof to the extent included in gross income for the purposes of federal income taxation if such obligations were issued prior to ~~December 31, 1994~~ January 1, 1995, to pay the cost of assets to which subsections (c) through (e) of Section 40-9B-7 apply.

(5) The amount of any aid or assistance, whether in the form of property, services or monies, provided to the State Industrial Development Authority pursuant to Section 41-10-44.8(d) in order to induce an approved company to undertake a major project within the state.

(6) Expenses otherwise deductible that were not deducted on the federal income tax return as a result of an election to claim a credit for those expenses.

(7)~~To the extent~~ If the taxpayer owns greater than 20 percent of the stock, by vote or value, of the distributing corporation the following deductions are allowed:

- a. Amounts described in 26 U.S.C. ~~Section~~ § 78;
- b. Dividend income, including amounts described in 26 U.S.C. ~~Section~~ § 951, from non-U.S. corporations to the

1 same extent such dividend income would be deductible under 26  
 2 U.S.C. ~~Section~~ § 243 if received from U.S. corporations; and

3 c. Dividends received from foreign sales  
 4 corporations as defined in 26 U.S.C. ~~Section~~ § 922.

5 ~~d.(8) The department shall promulgate a regulation~~  
 6 ~~regarding the allowable amount~~ portion of total deductible  
 7 interest expense classified as nonbusiness interest expense  
 8 not deductible at arriving at apportioned income, but instead  
 9 allocated to the situs of the related nonbusiness income  
 10 producing assets, related to the production of nonbusiness  
 11 income, which shall be based upon a formula using the ratio of  
 12 the average cost value of the corporation's nonbusiness assets  
 13 producing nonbusiness income as compared to the average cost  
 14 value of the corporation's total assets.

15 ~~(8)(9)~~ The interest portion of rent paid under lease  
 16 agreements entered into prior to ~~December 31, 1994~~ January 1,  
 17 1995, relating to obligations issued by the State of Alabama  
 18 or subdivisions or instrumentalities thereof, to the extent  
 19 that such obligations were issued to pay the cost of assets to  
 20 which subsections (c) through (e) of Section 40-9B-7 apply.

21 ~~(9)(10)~~ The amount by which the depletion allowance  
 22 specified in Section 40-18-16(b) exceeds the depletion  
 23 allowance deducted in calculating federal taxable income.

1           (b) Restrictions on the deductibility of certain  
2           intangible expenses and interest expenses with a related  
3           member.

4           (1) For purposes of computing its taxable income, a  
5           corporation shall add back otherwise deductible interest  
6           expenses and costs and intangible expenses and costs directly  
7           or indirectly paid, accrued or incurred to, or in connection  
8           directly or indirectly with one or more direct or indirect  
9           transactions, with one or more related members, except to the  
10           extent the corporation shows, upon request by the  
11           Commissioner, that the corresponding item of income was in the  
12           same taxable year: a. subject to a tax based on or measured by  
13           the related member's net income in Alabama or any other state  
14           of the United States, or b. subject to a tax based on or  
15           measured by the related member's net income by a foreign  
16           nation which has in force an income tax treaty with the United  
17           States, if the recipient was a "resident" (as defined in the  
18           income tax treaty) of the foreign nation. For purposes of this  
19           section, "subject to a tax based on or measured by the related  
20           member's net income" means that the receipt of the payment by  
21           the recipient related member is reported and included in  
22           income for purposes of a tax on net income, and not offset or  
23           eliminated in a combined or consolidated return which includes  
24           the payor.

1           (2) The corporation shall make the adjustments  
2           required in subsection (b) (1) of this section unless the  
3           corporation establishes that the adjustments are unreasonable,  
4           or the corporation and the Commissioner of Revenue agree in  
5           writing to the application or use of alternative adjustments  
6           and computations. Nothing in this section shall be construed  
7           to limit or negate the Commissioner's authority to otherwise  
8           enter into agreements and compromises otherwise allowed by  
9           law.

10           (3) The adjustments required in subsection (b)(1)  
11           shall not apply to that portion of interest expenses and costs  
12           and intangible expenses and costs if the corporation can  
13           establish that the transaction giving rise to the interest  
14           expenses and costs or the intangible expenses and costs  
15           between the corporation and the related member did not have as  
16           a principal purpose the avoidance of any Alabama tax and the  
17           related member is not primarily engaged in the acquisition,  
18           use, licensing, maintenance, management, ownership, sale,  
19           exchange, or any other disposition of intangible property, or  
20           in the financing of related entities. If the transaction  
21           giving rise to the interest expenses and costs or intangible  
22           expenses and costs, as the case may be, has a substantial  
23           business purpose and economic substance and contains terms and  
24           conditions comparable to a similar arm's length transaction  
25           between unrelated parties, the transaction will be presumed to

1 not have as its principal purpose tax avoidance, subject to  
2 rebuttal by the Commissioner of the Department of Revenue.

3 (4) Nothing in this section shall require a  
4 corporation to add to its taxable income more than once any  
5 amount of interest expenses and costs or intangible expenses  
6 and costs that the corporation pays, accrues or incurs to a  
7 related member described in subsection (b)(1).

8 (5) Nothing in this section shall be construed to  
9 limit or negate the Commissioner's authority to make  
10 adjustments under this chapter.

11 (6) Subsection (b) shall not limit the deduction of  
12 the interest portion of rent paid under lease agreements  
13 described in subsection (a)(9).

14 (c) Except with regard to payments described in  
15 subsections (a)(4)b. and (a)(9), nothing in this section shall  
16 be construed to allow any item to be deducted more than once  
17 or to allow a deduction for any item that is excluded from  
18 income or to allow any item to be included in the Alabama  
19 taxable income of more than one taxpayer.

20 ~~(b)~~ (d) The following credits shall be allowed  
21 against the tax levied by Section 40-18-31:

22 (1) the amount provided to an approved company  
23 pursuant to Section 41-10-44.8(a)(1), subject however, to the  
24 limitations contained in Section 41-10-44.8(c); and



1           (2) the amount provided in Section 41-10-44.9 to an  
2 approved company for a payment by such company into a tax  
3 increment fund."

4           "§40-18-35.1.

5           In computing the taxable income of corporations  
6 subject to income tax as outlined in Section 40-18-35, there  
7 shall be allowed, in addition to the deductions specified  
8 therein, a deduction for the sum of the net operating losses  
9 which may be carried forward to the taxable year for which the  
10 net income of the corporation is being computed.

11           (1) The term "net operating loss" for the purposes  
12 of this section means the excess of the deductions (other than  
13 the deduction allowed by this subdivision) allowed by this  
14 chapter during a taxable year of the corporation over the  
15 corporation's gross income during that taxable year. For  
16 purposes of this paragraph, the corporation's gross income and  
17 allowable deductions shall be determined under the provisions  
18 of this chapter applicable to the year in which the net  
19 operating loss arises.

20           (2) A net operating loss shall be carried forward to  
21 the earliest subsequent taxable year in which the corporation  
22 has taxable income (determined without taking into account the  
23 deduction allowed by this subdivision). The amount of a net  
24 operating loss which may be carried to any later taxable year  
25 shall be the excess of the net operating loss over the sum of

1 the amounts thereof deductible under this subdivision in all  
2 the taxable years preceding this taxable year.

3 (3) If net operating losses arising in more than one  
4 taxable year can be carried forward to a taxable year of the  
5 corporation, the net operating loss arising from the earliest  
6 of those years shall be deducted first.

7 (4) The net operating loss deduction allowed by this  
8 section shall be limited to sources attributable to Alabama.

9 (5) A net operating loss may be carried forward and  
10 deducted only during the 15 consecutive year period  
11 immediately following the taxable year in which it arose.

12 (6) In the case of an acquiring corporation subject  
13 to the rules of 26 U.S.C. § 381, or in the case of a new loss  
14 corporation within the meaning of 26 U.S.C. § 382, or in the  
15 case of the recognized built-in gains of a gain corporation  
16 within the meaning of 26 U.S.C. § 384, only the net operating  
17 losses as are allowable in accordance with 26 U.S.C. §§ 381,  
18 382, and 384 shall be allowed as a deduction under this  
19 section. This subdivision shall be applied before the  
20 limitations in the preceding subdivisions are applied.

21 (7) Notwithstanding the foregoing provisions of this  
22 section, for a taxpayer's taxable year beginning during  
23 calendar year 2001 no deduction for any net operating loss  
24 shall be allowed or allowable. If and only to the extent that  
25 any net operating loss deduction is disallowed by reason of

1     this subsection, the date on which the amount of the  
2     disallowed net operating loss deduction would otherwise expire  
3     will be extended by one year. A corporation dissolved and  
4     completely liquidated within calendar year 2001 may use its  
5     net operating loss without the restrictions provided in this  
6     subsection (7).

7             Section 2. Section 40-2A-17 is hereby added to the  
8     Code of Alabama 1975, to read as follows:

9             § 40-2A-17.

10            For purposes of the tax imposed in Chapter 18 of  
11     Title 40 of the Code of Alabama 1975, the following rules  
12     shall apply:

13            (a) In any case of two or more organizations,  
14     trades, or businesses (whether or not affiliated within the  
15     meaning of 26 U.S.C. § 1504) owned or controlled directly or  
16     indirectly by the same interests, the Commissioner of the  
17     Alabama Department of Revenue may distribute, apportion, or  
18     allocate gross income, deductions, credits, or allowances, if  
19     the Commissioner determines that such distribution,  
20     apportionment, or allocation is necessary in order to prevent  
21     evasion of Alabama income taxes or to clearly reflect the  
22     income of any such organization, trade, or business.

23            (b) Any transaction based upon tax planning advice,  
24     tax return preparation advice or tax return preparation  
25     services with respect to which an improper contingent fee is

1 directly or indirectly paid by the taxpayer shall be evidence  
2 of the evasion of Alabama income taxes.

3 (c) Any paid tax return preparer or tax planner who  
4 provides to a taxpayer tax planning advice, tax return  
5 preparation advice or tax return preparation services in  
6 consideration for an improper contingent fee shall be subject  
7 to a penalty as if such paid tax return preparer or tax  
8 planner was subject to the penalties imposed by 26 U.S.C. §  
9 6701.

10 (d) "Improper contingent fee" shall mean  
11 compensation received by a person or entity that is subject to  
12 the Code of Professional Conduct of the American Institute of  
13 Certified Public Accountants (or the applicable state version  
14 of such Code) for tax planning advice or tax return advice or  
15 preparation that would be improper under the terms of the Code  
16 rendered after December 31, 2001. With respect to any person  
17 or entity that renders tax planning advice, tax return advice  
18 or tax return preparations, but is not a certified public  
19 accountant, an "improper contingent fee" shall be defined in  
20 regulations prescribed by the Alabama Department of Revenue on  
21 a basis consistent with the Code of Professional Conduct of  
22 the American Institute of Certified Public Accountants.

23 (e) Subsections (b), (c), and (d) shall not apply  
24 to any contingent fee contract executed prior to January 1,  
25 2002.

1           (f) The Commissioner of the Alabama Department of  
2 Revenue shall exercise such authority in a manner consistent  
3 with this act and, to the extent applicable, 26 U.S.C. § 482  
4 and the rulings and regulations issued thereunder. The  
5 Commissioner is authorized and directed to promulgate such  
6 additional regulations as are necessary to enforce the  
7 provisions of this act."

8           Section 3. Sections 40-18-42 and 40-18-80, Code of  
9 Alabama 1975, are amended to read as follows:

10           "§40-18-42.

11           (a) Time of payment for individuals. —In the case of  
12 individuals the total balance of the tax owed after credits  
13 for taxes paid through withholding as provided in Section  
14 40-18-78, or through ~~declarations~~ estimated payments as  
15 provided in Sections 40-18-82 and 40-18-83, shall be due and  
16 payable on April 15 following the close of the calendar year  
17 or, if the return should be made on the basis of a fiscal  
18 year, then on the fifteenth day of the fourth month following  
19 the close of the fiscal year.

20           (b) Time of payment for fiduciaries. —In the case of  
21 fiduciaries, the total amount of the tax imposed by this  
22 chapter shall be paid on April 15 following the close of the  
23 calendar year or, if the return should be made on the basis of  
24 a fiscal year, then on the fifteenth day of the fourth month  
25 following the close of the fiscal year.

1           (c) Time of payment for corporations. - In the case  
2 of corporations, the balance of the tax owed after credits for  
3 taxes paid through ~~declarations~~ estimated payments as provided  
4 in Sections ~~40-18-82 and 40-18-83~~ 40-18-80.1 shall be due and  
5 paid on March 15 following the close of the calendar year or,  
6 if the return should be made on the basis of the fiscal year,  
7 then on the fifteenth day of the third month following the  
8 close of the fiscal year.

9           ~~(d) Extension of time for payment. - At the request~~  
10 ~~of the taxpayer, the department may extend the time for~~  
11 ~~payment of the amount determined as the tax due by the~~  
12 ~~taxpayer, for a period of not to exceed three months from the~~  
13 ~~date prescribed for the payment of tax. In such case the~~  
14 ~~amount in respect of which the extension is granted shall be~~  
15 ~~paid on or before the date of expiration of the period of the~~  
16 ~~extension.~~

17           ~~(e)~~(c) Voluntary advance payment. - The tax imposed  
18 by this chapter or any estimated tax payment thereof may be  
19 paid, at the election of the taxpayer, prior to the date  
20 prescribed for its payment.

21           § 40-18-80. Penalty where certain percent of tax  
22 exceeds estimated tax for individuals.

23           (a) If 90 percent of the tax, determined without  
24 regard to the credit under Section 40-18-78, in the case of  
25 individuals other than farmers exercising an election under

Sections 40-18-82 and 40-18-83, or 66 2/3 percent of such tax so determined in the case of such farmers, exceeds the estimated tax increased by such credit, there shall be added to the tax an amount equal to such excess, or equal to six percent of the amount by which such tax so determined exceeds the estimated tax so increased, whichever is the lesser.

(b) This subsection shall not apply to the taxable year in which:

(1) falls the death of the taxpayer occurs,

(2) nor shall it apply to the taxable year in which the taxpayer makes a timely payment on April 15, June 15, or and September 15 of such that year, or and on January 15 of the year succeeding the taxable year, or in the case of farmers exercising an election under Section 40-18-8240-18-83(a)(6) within the last quarter and making who make payment in an amount at least as great as though computed on the basis of the facts shown on his return for the preceding taxable year equal to one hundred percent of the tax shown on the return for the preceding taxable year (or, if no return is filed, ninety percent of the tax for such year).

(3) if the liability for the previous year was zero (0) (except for a net operating loss carryback to that year).

(b) In the case of corporations, if 90 percent of the tax exceeds the estimated tax there shall be added to the tax an amount equal to such excess or equal to six percent of

1     ~~the amount by which such tax so determined exceeds the~~  
2     ~~estimated tax so increased, whichever is the lesser. This~~  
3     ~~subsection shall not apply to the taxable year in which the~~  
4     ~~taxpayer makes a timely payment on April 15, June 15,~~  
5     ~~September 15, or December 15 of such year, in an amount at~~  
6     ~~least as great as though computed on the basis of the facts~~  
7     ~~shown on its return for the preceding taxable year.~~

8             Section 4. A new section 40-18-80.1 is added to the  
9     Code of Alabama 1975, to read as follows:

10            §40-18-80.1. Addition to Tax on Corporations.

11            (a) Addition to tax.

12            Except as otherwise provided in this section, in the  
13     case of any underpayment of estimated tax by a corporation,  
14     there shall be added to the tax under Chapter 18 for the  
15     taxable year an amount determined by applying the underpayment  
16     rate established under 26 U.S.C. § 6621, to the amount of the  
17     underpayment for the period of the underpayment.

18            (b) Amount of underpayment; period of underpayment.

19            For purposes of subsection (a):

20            (1) Amount is the required installment, in excess of  
21     the amount (if any) of the installment paid on or before the  
22     due date for the installment.

23            (2) The period of the underpayment shall run from  
24     the due date for the installment to whichever of the following  
25     dates is the earlier:



a. the 15th day of the 3rd month following the close of the taxable year, or

b. with respect to any portion of the underpayment, the date on which such portion is paid.

(3) For purposes of paragraph (2) b., a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(c) Number of required installments; due dates. For purposes of this section there shall be four required installments for each taxable year, the time for payment of installments shall be

Installment	The Due Date Is
1st	April 15
2nd	June 15
3rd	September 15
4th	December 15

(d) Amount of required installments.

For purposes of this section:

(1) a. Except as otherwise provided in this section, the amount of any required installment shall be 25 percent of the required annual payment.

b. Except as otherwise provided in this subsection, the term "required annual payment" means the lesser of:

1           1. 100 percent of the tax shown on the return for  
2 the taxable year (or, if no return is filed, 100 percent of  
3 the tax for such year), or

4           2. 100 percent of the tax shown on the return of the  
5 corporation for the preceding taxable year. However, this  
6 shall not apply if the preceding taxable year was not a  
7 taxable year of 12 months, or the corporation did not file a  
8 return for such preceding taxable year showing a liability for  
9 tax. For the first taxable year beginning after December 31,  
10 2000, the first sentence of this subparagraph shall be applied  
11 using 130 percent of the tax shown on the return for the  
12 preceding taxable year in lieu of 100 percent of such amount.

13           (2) Large corporations are required to pay 100  
14 percent of the current year tax.

15           Except as provided in paragraph b., subparagraph 2.  
16 of paragraph (1)b. shall not apply in the case of a large  
17 corporation.

18           a. The corporation may use the amount of last year's  
19 tax for first installment.

20           b. Paragraph a. shall not apply for purposes of  
21 determining the amount of the first required installment for  
22 any taxable year. Any reduction in such first installment by  
23 reason of the preceding sentence shall be recaptured by  
24 increasing the amount of the next required installment  
25 determined under subdivision (1) by the amount of such  
26 reduction.

1           (e) Lower required installment where annualized  
2 income installment or adjusted seasonal installment is less  
3 than amount determined under subsection (d). In the case of  
4 any required installment, the corporation may establish that  
5 the accrued income installment or the adjusted seasonal  
6 installment is less than the amount determined under (d) (1)  
7 in accordance with 26 U.S.C. § 6655(e).

8           (f) Exception where tax is small amount.

9           No addition to tax shall be imposed under subsection  
10 (a) for any taxable year if the tax shown on the return for  
11 such taxable year (or, if no return is filed, the tax) is less  
12 than \$5000.

13          (g) Definitions and special rules.

14          For purposes of this section, the meaning of the  
15 following terms are:

16          (1) Tax:

17           a. The excess of the tax levied by §40-18-31, over  
18           b. the credits against tax provided by §40-18-35(b)  
19 and §40-18-243.

20          (2) Large corporation:

21           a. Any corporation if such corporation (or any  
22 predecessor corporation) had taxable income of \$1,000,000 or  
23 more for any taxable year during the testing period.

24           b. Rules for applying subparagraph a.

25           1. Testing period.

1           For purposes of subparagraph a. the term "testing  
2     period" means the 3 taxable years immediately preceding the  
3     taxable year involved.

4           2. Certain carrybacks and carryovers not taken into  
5     account.

6           For purposes of subparagraph a., taxable income  
7     shall be determined without regard to any net operating loss  
8     carried to the taxable year under Section 40-18-35.1.

9           (3) Certain tax-exempt organizations.

10          a. Any organization subject to the tax on unrelated  
11     business taxable income shall be treated as a corporation  
12     subject to tax under 40-18-31.

13          b. Any reference to taxable income shall be treated  
14     as including a reference to unrelated business taxable income.  
15     In the case of any organization described in paragraph a.,  
16     subsection (b)(2)a. shall be applied by substituting "5th  
17     month" for "3rd month."

18          (4) Application of section to certain taxes imposed  
19     on S corporations.

20          In the case of an S corporation, for purposes of  
21     this section:

22          a. The following taxes shall be treated as imposed  
23     by 40-18-31:

24           1. The tax imposed by 40-18-174(a) (or the  
25     corresponding provisions of prior law.)

26           2. The tax imposed by 40-18-175(a).

27          b. Paragraph (2) of subsection (d) shall not apply.

1           c. Subparagraph 2. of subsection (d)(1)b. shall be  
2 applied as if it read as follows:

3           2. the sum of

4           (i) the amount determined under subparagraph 1. by  
5 only taking into account the taxes referred to in  
6 subparagraphs 1. and 3. of subsection (g)(4)a. and

7           (ii) 100 percent of the tax imposed by 40-18-175(a)  
8 which was shown on the return of the corporation of the  
9 preceding taxable year.

10          d. The requirement in the last sentence in  
11 subsection (d)(1)b. that the return for the preceding taxable  
12 year show a liability for tax shall not apply.

13          e. Any reference to subsection (e) to taxable income  
14 shall be treated as including a reference to the net  
15 recognized built-in gain or the excess passive income (as the  
16 case may be.)

17          (h) Fiscal years and short years.

18          (1) Fiscal years.

19          In applying this section to a taxable year beginning  
20 on any date other than January 1, there shall be substituted,  
21 for the months specified in this section, the months which  
22 correspond thereto.

23          (2) Short taxable year.

24          This section shall be applied to taxable years of  
25 less than 12 months in accordance with regulations prescribed  
26 by the Commissioner.

27          (i) Regulations.

1           The Commissioner shall prescribe such regulations as  
2           may be necessary to carry out the purposes of this section.

3           Section 5. Sections 40-18-82 and 40-18-83, Code of  
4           Alabama 1975, are amended to read as follows:

5           "§40-18-82.

6           (a) ~~Every individual and corporation~~ Individuals  
7           ~~shall, at the time prescribed in~~ remit in accordance with  
8           ~~subsection (c) (b) of this section, make a declaration of~~  
9           ~~estimated tax for the taxable year if net income from sources~~  
10          ~~other than wages, in the case of a single person or married~~  
11          ~~persons filing separate returns, can reasonably be expected to~~  
12          ~~exceed \$1,500~~ \$1,875 ~~for the taxable year; and in the case of~~  
13          ~~married persons living with husband or wife and filing a joint~~  
14          ~~return, if net income can be reasonably expected to exceed~~  
15          ~~\$3,000~~ \$3,750 ~~; and in the case of corporations, if Alabama~~  
16          ~~income tax liability can reasonably be expected to exceed~~  
17          ~~\$5,000.~~

18          ~~(b) In the declaration required under subsection~~  
19          ~~(a), the taxpayer shall state:~~

20          ~~(1) The amount which he estimates as the amount of~~  
21          ~~tax under Section 40-18-5 for the taxable year; or in the case~~  
22          ~~of a corporation the amount of tax estimated as the amount of~~  
23          ~~tax due under Section 40-18-31;~~

24          ~~(2) The amount which an individual taxpayer~~  
25          ~~estimates as the credits for the taxable year under Section~~  
26          ~~40-18-21(b) or Section 40-18-71, or the amount which a~~

1 corporate taxpayer estimates as the credits for the taxable  
2 year under Section 40-18-38(b);

3 (3) The excess of the amount estimated under  
4 subdivision (1) over the amount estimated under subdivision  
5 (2), which excess, for the purposes of this chapter, shall be  
6 considered the estimated tax for the taxable year; and

7 (4) Such other information as may be prescribed in  
8 regulations promulgated by the department.

9 (c) (b) The declaration payments required under  
10 subsection (a) of this section shall be filed with remitted to  
11 the department on or before April 15 of the taxable year;  
12 except, that if the requirements of subsection (a) of this  
13 section are first met:

14 (1) After April 1 and before June 2 of the taxable  
15 year, the declaration payment shall be filed remitted on or  
16 before June 15 of the taxable year;

17 (2) After June 1 and before September 2 of the  
18 taxable year, the declaration payment shall be filed remitted  
19 on or before September 15 of the taxable year; or

20 (3) After September 1 of the taxable year, the  
21 declaration payment shall be filed remitted on or before  
22 January 15 of the succeeding taxable year; ~~or in the case of~~  
23 ~~corporations on or before December 15 of the taxable year.~~  
24 However, if a return is filed and payment made by January 15  
25 of the succeeding taxable year by individuals, the estimated  
26 payment provided for by this subsection shall not be required.

1           ~~(d) A taxpayer may make amendments of a declaration~~  
2           ~~filed during the taxable year under subsection (c) of this~~  
3           ~~section, under regulations prescribed by the department.~~

4           ~~(e) If, on or before January 15 of the succeeding~~  
5           ~~taxable year, an individual taxpayer files a return for the~~  
6           ~~taxable year for which the declaration is required and pays in~~  
7           ~~full the amount computed on the return as payable then, under~~  
8           ~~regulations prescribed by the department:~~

9           ~~(1) If the declaration is not required to be filed~~  
10           ~~during the taxable year, but is required to be filed on or~~  
11           ~~before such January 15, such return shall, for the purposes of~~  
12           ~~this section, be considered as such declaration; and~~

13           ~~(2) If the tax shown on the return, reduced by the~~  
14           ~~credits under Section 40-18-78, is greater than the estimated~~  
15           ~~tax shown in a declaration previously made or, in the last~~  
16           ~~amendment thereof, such return shall, for the purposes of this~~  
17           ~~section, be considered as the amendment of the declaration~~  
18           ~~permitted by subsection (d) of this section to be filed on or~~  
19           ~~before January 15.~~

20           ~~(f) The department shall promulgate regulations~~  
21           ~~governing reasonable extensions of time for filing~~  
22           ~~declarations and paying the estimated tax. Except in the case~~  
23           ~~of taxpayers who are abroad, no such extension shall be for~~  
24           ~~more than six months.~~

25           ~~(g) If the taxpayer is unable to make his own~~  
26           ~~declaration, the declaration shall be made by a duly~~



~~authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.~~

"§40-18-83.

(a) The estimated tax provided for in Section 40-18-82 shall be paid as follows:

(1) If the ~~declaration is filed~~ requirements of Section 40-18-82(a) are first met on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid ~~at the time of the filing of the declaration~~ on April 15, the second and third on June 15 and September 15, respectively, of the taxable year and the fourth ~~on December 15 of the taxable year for corporations or~~ on January 15 of the succeeding taxable year for individuals.

(2) If the ~~declaration is filed~~ requirements of Section 40-18-82(a) are first met after April 15 and not after June 15 of the taxable year and is not required by subsection ~~(c)~~ (a) of Section 40-18-82 to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid ~~at the time of the filing of the declaration~~ on June 15 and the second on September 15 of the taxable year and the third ~~on December 15 of the taxable year for corporations, or~~ on January 15 of the succeeding taxable year for individuals.

(3) If the ~~declaration is filed~~ filing requirements of Section 40-18-82(a) are first met after June 15 and not after September 15 of the taxable year and is not required by

1 subsection ~~(c)~~ (a) of Section 40-18-82 to be filed on or  
 2 before June 15 of the taxable year, the estimated tax shall be  
 3 paid in two equal installments; the first installment shall be  
 4 paid ~~at the time of the filing of the declaration~~ September 15  
 5 and the second on ~~December 15 of the taxable year for~~  
 6 ~~corporations, or on~~ January 15 of the succeeding taxable year  
 7 for individuals.

8 (4) If the ~~declaration is filed~~ filing requirements  
 9 of Section 40-18-82(a) are first met after September 15 of the  
 10 taxable year, and is not required by subsection ~~(c)~~ (a) of  
 11 Section 40-18-82 to be filed on or before September 15 of the  
 12 taxable year, the estimated tax shall be paid in full ~~at the~~  
 13 ~~time of the filing of the declaration~~ on January 15 of the  
 14 succeeding taxable year for individuals.

15 (5) If the ~~declaration is filed~~ installment payments  
 16 are made after the time prescribed in ~~Section~~  
 17 ~~40-18-82~~ subsection (a), including cases where extensions of  
 18 ~~time have been granted~~, subdivisions (2), (3), and (4) of this  
 19 subsection shall not apply, and there shall be paid at the  
 20 time of ~~such~~ the payment ~~filing~~ all installments of estimated  
 21 tax, including interest at the prescribed rate which would  
 22 have been payable on or before ~~such~~ that time if the  
 23 ~~declaration~~ installments had been ~~filed~~ paid within the  
 24 time(s) prescribed in subsection ~~(c)~~ (a) of Section 40-18-82,  
 25 and the remaining installments shall be paid at the times at  
 26 which and in the amounts in which they would have been payable  
 27 ~~if the declaration had been so filed.~~

1           (6) In the case of an individual whose estimated  
2 gross income from farming for the taxable year is at least two  
3 thirds of the total estimated gross income from all sources  
4 for the taxable year shall be permitted to make the estimated  
5 payment on or before February 15 of the succeeding tax year,  
6 and further provided that if such an individual files a return  
7 on or before February 28 of the succeeding tax year and pays  
8 in full the amount computed on the return as payable, such  
9 return shall have the effect of satisfying the requirements  
10 prescribed in subdivisions (1), (2), (3), (4), and (5) of this  
11 subsection.

12           (b) If ~~any amendment of the declaration is filed~~  
13 during the taxable year a taxpayer determines that the  
14 estimated tax payments were incorrect, the remaining  
15 installments, if any, shall be ratably increased or decreased  
16 as the case may be, to reflect the respective increase or  
17 decrease in the estimated tax ~~by reason of such amendment; and~~  
18 if any ~~amendment~~ taxpayer determination is made after October  
19 15 of the taxable year, any increase in the estimated tax by  
20 reason thereof shall be paid at the time of ~~making such~~  
21 ~~amendment~~ the taxpayer determination.

22           (c) At the election of the taxpayer, any installment  
23 of the estimated tax may be paid prior to the date prescribed  
24 for its payment.

25           (d) Payment of the estimated tax, or any installment  
26 thereof, shall be considered payment on account of the tax for

1 the taxable year. Assessment in respect of the estimated tax  
2 shall be limited to the amount paid.

3 ~~(e) In the case of an individual whose estimated~~  
4 ~~gross income from farming for the taxable year is at least two~~  
5 ~~thirds of the total estimated gross income from all sources~~  
6 ~~for the taxable year, in lieu of the time prescribed in~~  
7 ~~subsection (c) of Section 40-18-82, the declaration for the~~  
8 ~~taxable year may be made at any time on or before February 15~~  
9 ~~of the succeeding taxable year; and if such an individual~~  
10 ~~files a return on or before February 28 of the succeeding~~  
11 ~~taxable year and pays in full the amount computed on the~~  
12 ~~return as payable, such return shall have the same effect as~~  
13 ~~that prescribed in subsection (e) of Section 40-18-82 in the~~  
14 ~~case of a return filed on or before February 15.~~

15 ~~(f)~~ (e) The application of this section, Section  
16 40-18-82 and subsection (a) of Section 40-18-80 to taxable  
17 years of less than 12 months shall be as prescribed in  
18 regulations promulgated by the department.

19 ~~(g)~~ (f) In the application of this section and  
20 Section 40-18-82 to taxpayers reporting income on a fiscal  
21 year basis, there shall be substituted for the dates specified  
22 therein the months corresponding thereto."

23 Section 6. Section 40-2A-18 is hereby added to the  
24 Code of Alabama 1975, to read as follows:

25 §40-2A-18.

26 Interest on any final assessment accrues from the  
27 date of entry of the final assessment on the total amount of

1 its components including tax, interest, and any penalty, as  
2 one lump sum amount. The preceding sentence is a restatement  
3 of current law as it applies to interest accrual after final  
4 assessment. Notwithstanding any provision of this act, this  
5 section shall apply to all open tax years as of the effective  
6 date of this act and for all subsequent tax years.

7 Section 7. Notwithstanding any other provision of  
8 law, including any law enacted at the Fourth Special Session  
9 of 2001, if a nonresident owner of a subchapter K entity  
10 certifies in writing, under penalty of perjury, to the entity,  
11 prior to the filing of the entity's income tax return for the  
12 first taxable year beginning in calendar year 2002, that the  
13 nonresident owner has fully paid its Alabama income tax  
14 attributable to its distributive share of the entity's net  
15 taxable income allocated and apportioned to Alabama with  
16 respect to its taxable year ending in 2001 the entity shall  
17 not be required to pay to Alabama an annual amount equal to  
18 the highest tax rate applicable to C corporations under  
19 Chapter 18 of Title 40, if the nonresident owner is a  
20 corporation, and otherwise the highest tax rate applicable to  
21 individuals under Chapter 18 of Title 40, multiplied by the  
22 amount of the nonresident owner's distributive share of the  
23 net taxable income allocated and apportioned to Alabama, as  
24 reflected on the entity's return for the period in question.  
25 "Nonresident owner" and "subchapter K entity" shall have the  
26 same meanings for purposes of this section as defined in  
27 Section 40-18-1. This section shall have no force or effect if

1 House Bill 7, as introduced in the Fourth Special Session of  
2 2001, does not become law.

3 Section 8. All laws or parts of laws which conflict  
4 with this act are repealed.

5 Section 9. The provisions of this act are severable.  
6 If any part of this act is declared invalid or  
7 unconstitutional, that declaration shall not affect the part  
8 which remains.

9 Section 10. This act shall become effective for all  
10 tax years beginning subsequent to December 31, 2000, following  
11 its passage and approval by the Governor, or its otherwise  
12 becoming law.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 14-DEC-2001, as amended.

Greg Pappas  
Clerk

Senate	<hr/> 19-DEC-2001 <hr/>	Amended and Passed
House	21-DEC-2001	Passed, as amended by Conference Com- mittee Report
Senate	<hr/> 21-DEC-2001 <hr/>	Passed, as amended by Conference Com- mittee Report

1	House	December 21, 2001	Passed, the Governor's objections to the contrary notwithstanding  Yeas 72, Nays 15, Abstains
2			
3			
4			
5			
6	Seante	December 21, 2001	Passed, the Governor's objections to the contrary notwithstanding  Yeas 32, Nays 1
7			
8			